UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/RES/45/117
3 April 1991

Forty-fifth session
Agenda item 100

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the Third Committee (A/45/756)]

45/117. Model Treaty on Mutual Assistance in Criminal Matters

The General Assembly,

Bearing in mind the Milan Plan of Action, 1/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in mind also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ principle 37 of which stipulates that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling resolution 1 of the Seventh Congress, 3/ on organized crime, in which Member States were urged, inter alia, to increase their activity at the international level in order to combat organized crime, including, as appropriate, entering into bilateral treaties on extradition and mutual legal assistance,

---

1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. B.

3/ Ibid., sect. E.

Recalling also resolution 23 of the Seventh Congress, 3/ on criminal acts of a terrorist character, in which all States were called upon to take steps to strengthen co-operation particularly, inter alia, in the area of mutual legal assistance,

Recalling further the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 4/

Acknowledging the valuable contributions to the development of a model treaty on mutual assistance in criminal matters that Governments, non-governmental organizations and individual experts have made, in particular the Government of Australia and the International Association of Penal Law,

Gravely concerned about the escalation of crime, both national and transnational,

Convinced that the establishment of bilateral and multilateral arrangements for mutual assistance in criminal matters will greatly contribute to the development of more effective international co-operation for the control of criminality,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

Recognizing the importance of a model treaty on mutual assistance in criminal matters as an effective way of dealing with the complex aspects and serious consequences of crime, especially in its new forms and dimensions,

1. Adopts the Model Treaty on Mutual Assistance in Criminal Matters together with the Optional Protocol thereto, contained in the annex to the present resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving co-operation in matters of crime prevention and criminal justice;

2. Invites Member States, if they have not yet established treaty relations with other States in the matter of mutual assistance in criminal matters, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Treaty;

4/ E/CONF.82/15 and Corr.2.

5/ Resolution 217 A (III).

6/ See resolution 2200 A (XXI), annex.

3. Urges all States to strengthen further international co-operation and mutual assistance in criminal justice;

4. Requests the Secretary-General to bring the present resolution, with the Model Treaty and the Optional Protocol thereto, to the attention of Governments;

5. Urges Member States to inform the Secretary-General periodically of efforts undertaken to establish mutual assistance arrangements in criminal matters;

6. Requests the Committee on Crime Prevention and Control to review periodically the progress attained in this field;

7. Also requests the Committee on Crime Prevention and Control, where requested, to provide guidance and assistance to Member States in the development of legislation which would enable giving effect to the obligations which will be contained in such treaties as are to be negotiated on the basis of the Model Treaty;

8. Invites Member States, on request, to make available to the Secretary-General the provisions of their legislation on mutual assistance in criminal matters so that these may be made available to those Member States desiring to enact or further develop legislation in this field.

68th plenary meeting
14 December 1990

ANNEX

Model Treaty on Mutual Assistance in Criminal Matters

The _____ and the _____

Desirous of extending to each other the widest measure of co-operation to combat crime,

Have agreed as follows:

ARTICLE 1

Scope of application 7/

1. The Parties shall, in accordance with the present Treaty, afford to each other the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the punishment of which at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.

2. Mutual assistance to be afforded in accordance with the present Treaty may include:

(a) Taking evidence or statements from persons;

(b) Assisting in the availability of detained persons or others to give evidence or assist in investigations;

(c) Effecting service of judicial documents;

(d) Executing searches and seizures;

(e) Examining objects and sites;

(f) Providing information and evidentiary items;

(g) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

3. The present Treaty does not apply to:

(a) The arrest or detention of any person with a view to the extradition of that person;

(b) The enforcement in the requested State of criminal judgements imposed in the requesting State except to the extent permitted by the law of the requested State and the Optional Protocol to the present Treaty;

(c) The transfer of persons in custody to serve sentences;

(d) The transfer of proceedings in criminal matters.

7/ Additions to the scope of assistance to be provided, such as provisions covering information on sentences passed on nationals of the Parties, can be considered bilaterally. Obviously, such assistance must be compatible with the law of the requested State.

ARTICLE 2 8/

Other arrangements

Unless the Parties decide otherwise, the present Treaty shall not affect obligations subsisting between them whether pursuant to other treaties or arrangements or otherwise.

ARTICLE 3

Designation of competent authorities

Each Party shall designate and indicate to the other Party an authority or authorities by or through which requests for the purpose of the present Treaty should be made or received.

ARTICLE 4 9/

Refusal of assistance

1. Assistance may be refused if: 10/

(a) The requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order (ordre public) or other essential public interests;

(b) The offence is regarded by the requested State as being of a political nature;

(c) There are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;

8/ Article 2 recognizes the continuing role of informal assistance between law enforcement agencies and associated agencies in different countries.

9/ Article 4 provides an illustrative list of the grounds for refusal.

10/ Some countries may wish to delete or modify some of the provisions or include other grounds for refusal, such as those related to the nature of the offence (e.g. fiscal), the nature of the applicable penalty (e.g. capital punishment), requirements of shared concepts (e.g. double jurisdiction, no lapse of time) or specific kinds of assistance (e.g. interception of telecommunications, performing deoxyribonucleic-acid (DNA) tests). In particular, some countries may wish to include as grounds for refusal the fact that the act on which the request is based would not be an offence if committed in the territory of the requested State (dual criminality).

(d) The request relates to an offence that is subject to investigation or prosecution in the requested State or the prosecution of which in the requesting State would be incompatible with the requested State's law on double jeopardy (ne bis in idem);

(e) The assistance requested requires the requested State to carry out compulsory measures that would be inconsistent with its law and practice had the offence been the subject of investigation or prosecution under its own jurisdiction;

(f) The act is an offence under military law, which is not also an offence under ordinary criminal law.

2. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions.

3. The requested State may postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the requested State.

4. Before refusing a request or postponing its execution, the requested State shall consider whether assistance may be granted subject to certain conditions. If the requesting State accepts assistance subject to these conditions, it shall comply with them.

5. Reasons shall be given for any refusal or postponement of mutual assistance.

ARTICLE 5

Contents of requests

1. Requests for assistance shall include: 11/

(a) The name of the requesting office and the competent authority conducting the investigation or court proceedings to which the request relates;

(b) The purpose of the request and a brief description of the assistance sought;

(c) A description of the facts alleged to constitute the offence and a statement or text of the relevant laws, except in cases of a request for service of documents;

(d) The name and address of the person to be served, where necessary;

11/ This list can be reduced or expanded in bilateral negotiations.

(e) The reasons for and details of any particular procedure or requirement that the requesting State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;

(f) Specification of any time-limit within which compliance with the request is desired;

(g) Such other information as is necessary for the proper execution of the request.

2. Requests, supporting documents and other communications made pursuant to the present Treaty shall be accompanied by a translation into the language of the requested State or another language acceptable to that State.

3. If the requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

ARTICLE 6

Execution of requests 12/

Subject to article 19 of the present Treaty, requests for assistance shall be carried out promptly, in the manner provided for by the law and practice of the requested State. To the extent consistent with its law and practice, the requested State shall carry out the request in the manner specified by the requesting State.

ARTICLE 7

Return of material to the requested State

Any property, as well as original records or documents, handed over to the requesting State under the present Treaty shall be returned to the requested State as soon as possible unless the latter waives its right of return thereof.

12/ More detailed provisions may be included concerning the provision of information on the time and place of execution of the request and requiring the requested State to inform promptly the requesting State in cases where significant delay is likely to occur or where a decision is made not to comply with the request and the reasons for refusal.

ARTICLE 8 13/

Limitation on use

The requesting State shall not, without the consent of the requested State, use or transfer information or evidence provided by the requested State for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.

ARTICLE 9

Protection of confidentiality 14/

Upon request:

(a) The requested State shall use its best endeavours to keep confidential the request for assistance, its contents and its supporting documents as well as the fact of granting of such assistance. If the request cannot be executed without breaching confidentiality, the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed;

(b) The requesting State shall keep confidential evidence and information provided by the requested State, except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

13/ Some countries may wish to omit article 8 or modify it, e.g. restrict it to fiscal offences.

14/ Provisions relating to confidentiality will be important for many countries but may present problems to others. The nature of the provisions in individual treaties can be determined in bilateral negotiations.

ARTICLE 10

Service of documents 15/

1. The requested State shall effect service of documents that are transmitted to it for this purpose by the requesting State.

2. A request to effect service of summonses shall be made to a requested State not less than [...] 16/ days before the date on which the appearance of a person is required. In urgent cases, the requested State may waive the time requirement.

ARTICLE 11 17/

Obtaining of evidence

1. The requested State shall, in conformity with its law and upon request, take the sworn or affirmed testimony, or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the requesting State.

2. Upon the request of the requesting State, the parties to the relevant proceedings in the requesting State, their legal representatives and representatives of the requesting State may, subject to the laws and procedures of the requested State, be present at the proceedings.

15/ More detailed provisions relating to the service of documents, such as writs and judicial verdicts, can be determined bilaterally. Provisions may be desired for the service of documents by mail or other manner and for the forwarding of proof of service of the documents. For example, proof of service could be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested State that service has been effected, with an indication of the form and date of such service. One or other of these documents could be sent promptly to the requesting State. The requested State could, if the requesting State so requests, state whether service has been effected in accordance with the law of the requested State. If service could not be effected, the reasons could be communicated promptly by the requested State to the requesting State.

16/ Depending on travel distance and related arrangements.

17/ Article 11 is concerned with the obtaining of evidence in judicial proceedings, the taking of a person's statement by a less formal process and the production of items of evidence.

ARTICLE 12

Right or obligation to decline to give evidence

1. A person who is required to give evidence in the requested or requesting State may decline to give evidence where either:

(a) The law of the requested State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requested State; or

(b) The law of the requesting State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requesting State.

2. If a person claims that there is a right or obligation to decline to give evidence under the law of the other State, the State where that person is present shall, with respect thereto, rely on a certificate of the competent authority of the other State as evidence of the existence or non-existence of that right or obligation.

ARTICLE 13

Availability of persons in custody to give evidence or to assist in investigations 18/

1. Upon the request of the requesting State, and if the requested State agrees and its law so permits, a person in custody in the latter State may, subject to his or her consent, be temporarily transferred to the requesting State to give evidence or to assist in the investigations.

2. While the person transferred is required to be held in custody under the law of the requested State, the requesting State shall hold that person in custody and shall return that person in custody to the requested State at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.

3. Where the requested State advises the requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in article 14 of the present Treaty.

18/ In bilateral negotiations, provisions may also be introduced to deal with such matters as the modalities and time of restitution of evidence and the setting of a time-limit for the presence of the person in custody in the requesting State.

ARTICLE 14

Availability of other persons to give evidence or assist in investigations 19/

1. The requesting State may request the assistance of the requested State in inviting a person:

(a) To appear in proceedings in relation to a criminal matter in the requesting State unless that person is the person charged; or

(b) To assist in the investigations in relation to a criminal matter in the requesting State.

2. The requested State shall invite the person to appear as a witness or expert in proceedings or to assist in the investigations. Where appropriate, the requested State shall satisfy itself that satisfactory arrangements have been made for the person's safety.

3. The request or the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the requesting State.

4. Upon request, the requested State may grant the person an advance, which shall be refunded by the requesting State.

ARTICLE 15 20/

Safe conduct

1. Subject to paragraph 2 of the present article, where a person is in the requesting State pursuant to a request made under article 13 or 14 of the present Treaty:

(a) That person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the requesting State in respect of any acts or omissions or convictions that preceded the person's departure from the requested State;

19/ Provisions relating to the payment of the expenses of the person providing assistance are contained in paragraph 3 of article 14. Additional details, such as provision for the payment of costs in advance, can be the subject of bilateral negotiations.

20/ The provisions in article 15 may be required as the only way of securing important evidence in proceedings involving serious national and transnational crime. However, as they may raise difficulties for some countries, the precise content of the article, including any additions or modifications, can be determined in bilateral negotiations.

(b) That person shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation to which the request relates.

2. Paragraph 1 of the present article shall cease to apply if that person, being free to leave, has not left the requesting State within a period of [15] consecutive days, or any longer period otherwise agreed on by the Parties, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to article 13 or accept an invitation pursuant to article 14 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

ARTICLE 16

Provision of publicly available documents and other records 21/

1. The requested State shall provide copies of documents and records in so far as they are open to public access as part of a public register or otherwise, or in so far as they are available for purchase or inspection by the public.

2. The requested State may provide copies of any other document or record under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

ARTICLE 17

Search and seizure 22/

The requested State shall, in so far as its law permits, carry out requests for search and seizure and delivery of any material to the requesting State for evidentiary purposes, provided that the rights of bona fide third parties are protected.

21/ The question may arise as to whether this should be discretionary. This provision can be the subject of bilateral negotiations.

22/ Bilateral arrangements may cover the provision of information on the results of search and seizure and the observance of conditions imposed in relation to the delivery of seized property.

ARTICLE 18

Certification and authentication 23/

A request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

ARTICLE 19

Costs 24/

The ordinary costs of executing a request shall be borne by the requested State, unless otherwise determined by the Parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.

ARTICLE 20

Consultation

The Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of the present Treaty either generally or in relation to a particular case.

ARTICLE 21

Final provisions

1. The present Treaty is subject to (ratification, acceptance or approval). The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

23/ The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts, and, therefore, would require a clause setting out the authentication required.

24/ More detailed provisions may be included, for example, the requested State would meet the ordinary cost of fulfilling the request for assistance except that the requesting State would bear (a) the exceptional or extraordinary expenses required to fulfil the request, where required by the requested State and subject to previous consultations; (b) the expenses associated with conveying any person to or from the territory of the requested State, and any fees, allowances or expenses payable to that person while in the requesting State pursuant to a request under article 11, 13 or 14; (c) the expenses associated with conveying custodial or escorting officers; and (d) the expenses involved in obtaining reports of experts.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

_____ _____

DONE at _____ on _____ in the _____ and _____ languages, [both/all] texts being equally authentic.

Optional Protocol to the Model Treaty on Mutual Assistance in Criminal Matters concerning the proceeds of crime 25/

1. In the present Protocol "proceeds of crime" means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.

2. The requested State shall, upon request, endeavour to ascertain whether any proceeds of the alleged crime are located within its jurisdiction and shall notify the requesting State of the results of its inquiries. In making the request, the requesting State shall notify the requested State of the basis of its belief that such proceeds may be located within its jurisdiction.

25/ The present Optional Protocol is included on the ground that questions of forfeiture are conceptually different from, although closely related to, matters generally accepted as falling within the description of mutual assistance. However, States may wish to include these provisions in the text because of their importance in dealing with organized crime. Moreover, assistance in forfeiting the proceeds of crime has now emerged as a new instrument in international co-operation. Provisions similar to those outlined in the present Protocol appear in many bilateral assistance treaties. Further details can be provided in bilateral arrangements. One matter that could be considered is the need for other provisions dealing with issues related to bank secrecy. An addition could, for example, be made to paragraph 4 of the present Protocol providing that the requested State shall, upon request, take such measures as are permitted by its law to require compliance with monitoring orders by financial institutions. Provision could be made for the sharing of the proceeds of crime between the Contracting States or for consideration of the disposal of the proceeds on a case-by-case basis.

3. In pursuance of a request made under paragraph 2 of the present Protocol, the requested State shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.

4. Where, pursuant to paragraph 2 of the present Protocol, suspected proceeds of crime are found, the requested State shall upon request take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the requesting State.

5. The requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds of crime made by a court of the requesting State or take other appropriate action to secure the proceeds following a request by the requesting State. 26/

6. The Parties shall ensure that the rights of bona fide third parties shall be respected in the application of the present Protocol.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Protocol.

_____ _____

DONE at _____ on _____ in the _____
and _____ languages, [both/all] texts being equally authentic.

26/ The Parties might consider widening the scope of the present Protocol by the inclusion of references to victims' restitution and the recovery of fines imposed as a sentence in a criminal prosecution.